

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-103961-11

Date:

July 11, 2011

In Re:

TY:

### Legend

Taxpayer =

Law Firm =

Accounting Firm =

Shareholder =

Date 1 =

Date 2 =

Dear :

This responds to a letter dated December 22, 2010, supplemented by letters dated March 16, 2011 and May 17, 2011, submitted by Law Firm requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (Election To Be Treated as an Interest Charge DISC) for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer, Law Firm, and Accounting Firm, and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the material submitted in support of the request for rulings. It is subject to verification on examination.

### FACTS

Taxpayer is a domestic corporation wholly owned by Shareholder with a calendar taxable year.

At Shareholder's request, Law Firm incorporated Taxpayer effective as of Date 1. Shareholder intended that Taxpayer would elect to be treated as an interest charge

domestic international sales corporation ("IC-DISC") as of Date 1 based on previous discussions among Shareholder, Law Firm and Accounting Firm. Shareholder relied on Law Firm and Accounting Firm to provide tax advice and prepare all documentation necessary for Taxpayer to be treated as an IC-DISC. Shortly after Taxpayer was incorporated, both Law Firm and Accounting Firm assured Shareholder that no further actions were required in order for Taxpayer to be treated as an IC-DISC as of Date 1. Law Firm had requested Accounting Firm to prepare and file the Form 4876-A, and assumed Accounting Firm would do so. However, Accounting Firm neither filed nor advised Taxpayer to file Form 4876-A within 90 days of Date 1 because it had assumed that Law Firm would be responsible for timely filing this form.

On Date 2, Shareholder contacted Law Firm and Accounting Firm to set up a telephone conference to discuss Taxpayer's year-end matters and the filing of Taxpayer's income tax return for its first taxable year. At this time, Law Firm and Accounting Firm discovered that Form 4876-A had not been filed. After discussions with Shareholder and Law Firm, Accounting Firm prepared and filed Form 4876-A on behalf of Taxpayer. Law Firm then prepared and submitted this ruling request to the Service for an extension of time to file Form 4876-A for Taxpayer's first taxable year. At the time of this request, the Service had not discovered that Form 4876-A was not filed within 90 days of Date 1.

### **LAW AND ANALYSIS**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as a IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year beginning Date 1.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be attached to the Federal income tax return for any taxable year to which the ruling applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Jason M. Osborn  
Senior Technical Reviewer, Branch 6  
Office of Associate Chief Counsel (International)